



1.0



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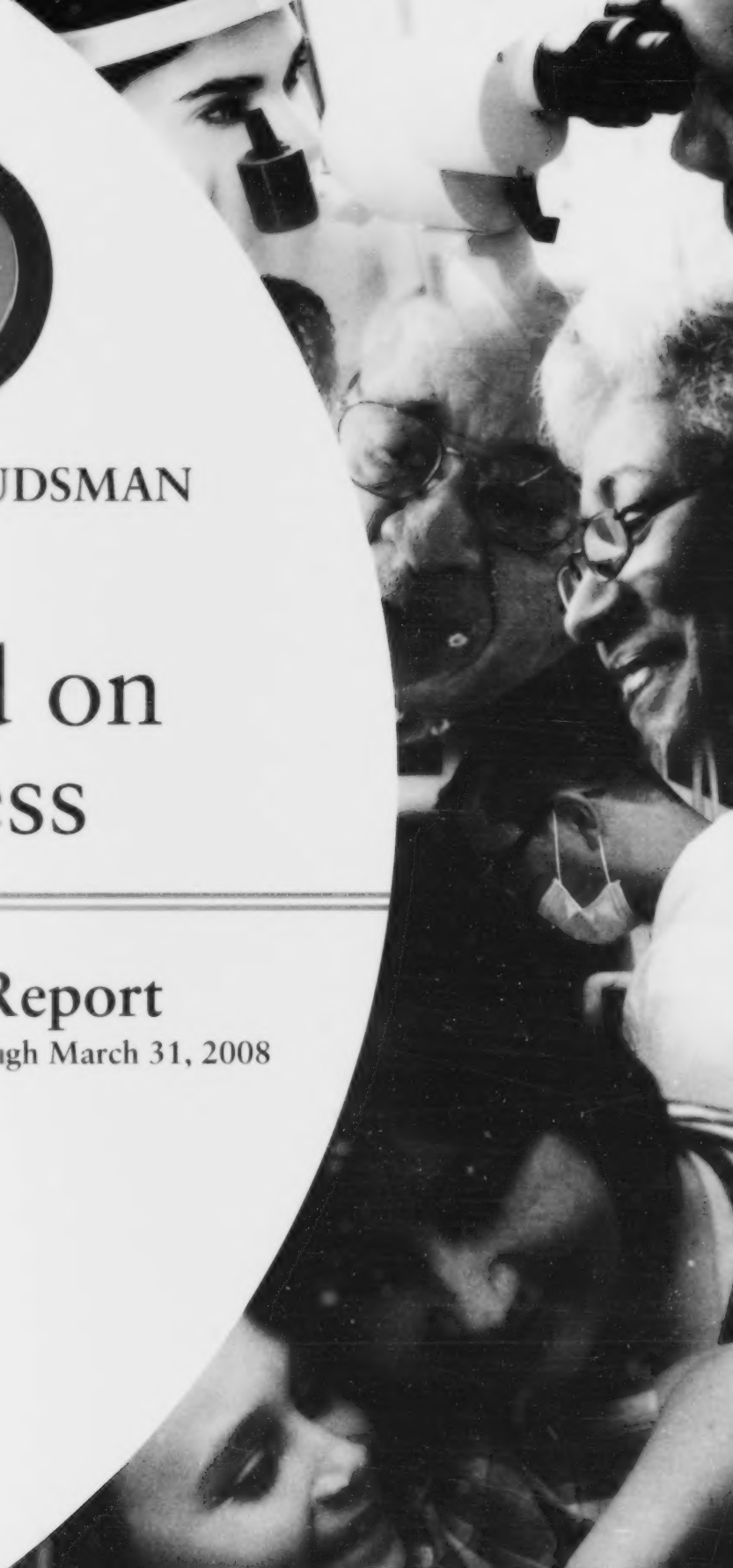


ALBERTA OMBUDSMAN

# Focused on Fairness

## 41<sup>st</sup> Annual Report

For the period April 1, 2007 through March 31, 2008







ALBERTA OMBUDSMAN  
*Focused on Fairness*

September 2008

Mr. Leonard Mitzel, Chair  
Standing Committee on Legislative Offices  
503 Legislature Building  
Edmonton, Alberta  
T5K 2B6

Dear Mr. Mitzel:

The Office of the Ombudsman is pleased to present its 41<sup>st</sup> Annual Report to you and through you, to the Legislative Assembly.

The Report has been prepared in accordance with section 28(1) of the *Ombudsman Act* and covers the activities of the Office of the Ombudsman for the period April 1, 2007 through March 31, 2008.

Respectfully,

G. B. (Gord) Button  
Alberta Ombudsman





**ALBERTA OMBUDSMAN**

*Focused on Fairness*

**VISION, MISSION AND VALUES**

## VISION

The Alberta Ombudsman is the recognized leader for independent investigation, promotion and support of administrative fairness.

## MISSION

The Alberta Ombudsman independently and impartially promotes high standards of administrative fairness through investigations, recommendations for change and education.

## VALUES

To obtain our Vision and deliver our Mission, our Values are fundamental to all our interactions and communications.

We Value:

Fairness  
Competency  
Respect  
Integrity  
Equity and  
Confidentiality

We also value a working environment that fosters personal and professional growth and development, collaboration and teamwork, and innovation and creativity.



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MESSAGE FROM THE  
OMBUDSMAN

## INTRODUCTION

It is my pleasure to introduce the 41<sup>st</sup> Annual Report of the Alberta Ombudsman. The past year has again been filled with challenges and accomplishments as we strive to constantly improve the service we provide Albertans. The number and complexity of investigations we undertake continues to grow which requires us to constantly reassess the way we approach the work to meet the needs and expectations of all stakeholders. In these comments I will provide a brief overview of the past year, a glimpse of what is in this report and a look ahead at the coming year.

## THE YEAR IN REVIEW

The volume of new work has gone up significantly in the past year. Oral complaints are up over 5% to 4395 and written complaints, which are a more significant indication of our workload, are up almost 12% to 708. We opened 197 new formal investigations, a 26% increase. Although new Alternative Complaint Resolution files dropped from 42 to 25, Informal Resolution files increased from 177 to 191. These represent an efficient resolution to a considerable number of complaints which would have otherwise resulted in formal investigations prior to the introduction of these informal problem-solving approaches.

The entire team responsible for the delivery of the Protection for Persons in Care program: Deputy Minister Tim Wiles, Assistant Deputy Minister Dave Arsenault, Director Edith Baraniecki, and Manager Bobbie Murphy, have demonstrated a keen interest in developing administratively fair processes.

We ended the year with 278 open files, an increase of almost 10%. As a result, I anticipate the coming year will again present us with the challenge of responding to complaints in a timely fashion without compromising the quality and thoroughness of our investigations. An overview of our Strategic Business Plan and Key Initiatives is contained in this report to provide insight into our planning and performance priorities.

This year we succeeded in improving the timeliness of our investigations but we continue to focus our attention on this area. I have set challenging but realistic goals for each investigator for the coming year to ensure we continue to meet those targets. I made a significant number of meaningful recommendations to authorities this year when our investigations found unfairness. As I have reported previously, authorities are very cooperative and willing to accept our findings and implement our recommendations. This report contains brief details of some of our investigative findings and resulting recommendations.

## ADMINISTRATIVE FAIRNESS GUIDELINES

Over the years and through a myriad of decisions, the courts have prescribed what constitutes administrative fairness. We have applied the core elements of these decisions to develop our Administrative Fairness Guidelines which are the tests we apply during our investigations to examine how authorities have discharged their duties and made decisions. When we find an authority has not complied with one or more of these guidelines, we make a finding of unfairness and recommend a course of action to remedy the unfairness and improve business practices. If appropriate and attainable,



our recommendations also focus on providing redress to the aggrieved party. A section of this report is dedicated to providing a better understanding of the guidelines, examples of investigative results relative to each guideline and recommendations made to resolve the complaints.

## SIGNIFICANT DEVELOPMENTS

The past year was interesting and challenging in many respects. As noted in the organizational chart, I am joined on the Senior Management Team by the Deputy Ombudsman, the Director Corporate Services and my Senior Counsel, who provides management capacity in addition to her primary role as legal counsel. To ensure leadership and quality assurance capacities, I created new Team Leader/Senior Investigator positions in both the Edmonton and Calgary offices. The incumbents continue as active investigators but also provide quality assurance and mentoring capacity to support the role of the Deputy Ombudsman.

We continue to bring new people into the Office which ensures we constantly view issues through fresh perspectives. However, the hiring of new staff continues to challenge us to provide the mentoring and training necessary for them to become proficient at their work. After almost four years with the Office, Deputy Ombudsman Georgeann Wilkin retired this year. Former Senior Counsel Pam McHugh was promoted to Deputy Ombudsman and I hired a new Senior Counsel. I also hired three new investigators and will fill one vacant investigator position later this year. Since I was appointed five years ago, 13 of 23 staff are new. This turnover and increase in staff are unprecedented in this Office.

In July 2007 we undertook an own motion investigation into the actions of the Alberta Energy and Utilities Board (AEUB) during the hearings in Rimbey into the construction of a 500 kilovolt electrical transmission line between Edmonton and Calgary. We initiated an investigation as the result of allegations reported in the media that the AEUB hired private investigators who were unfairly spying on the activities of interested parties at the hearings. Details on the investigation are provided later in this report.

This year we also petitioned the courts to resolve a dispute between our Office and the Chief Commissioner of the Alberta Human Rights and Citizenship Commission. An overview of this issue and the court's decision appear later in this report.

More of our work this year was focused on new jurisdictional authorities. We investigated complaints about the complaint handling procedure of several health profession colleges pursuant to the provisions of the *Health Professions Act* and also commenced investigations under the new Patient Concerns Resolution Process Regulation. These pieces of legislation provide processes for the health profession colleges, the Health Authorities and the Alberta Cancer Board to follow in response to complaints from patients. I have continued to work proactively with these organizations to help establish

Kathleen Ruelling,  
Acting Manager,  
Government  
Relations, Workers'  
Compensation  
Board, continues  
to provide  
exemplary service  
to my Office  
in responding  
to formal and  
informal inquiries.



administratively fair complaint handling procedures consistent with their guiding legislation.

Another interesting development this year was the adoption of the Public Agencies Governance Framework by the Government of Alberta. Alberta has approximately 250 agencies, boards and commissions with mandates and authorities to carry out various government responsibilities. The Framework focuses on promoting good governance of these agencies by providing accountability and transparency through merit-based appointments, education and training, evaluation and good business planning. I have authority to investigate the actions of most of these agencies so this initiative will likely have a significant impact on our workload in the coming years.

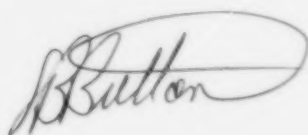
#### THE FUTURE

There are several important developments to track as I look forward to the coming year. Our new staff are well settled into their responsibilities and will contribute significantly to our capacity to undertake both reactive complaint-generated investigations and proactive own motion investigations. We are still stretched to the limit to complete complaint-generated investigations within acceptable time frames so we have incorporated new procedures to streamline our investigations. As the complaint mechanisms of the Health Authorities and health profession colleges become better known to citizens, I expect we will experience an increase in the number of complaints submitted to this Office.

#### IN CONCLUSION

As we move into the 2008/09 fiscal year, we are filled with optimism. We continue to see very tangible results from our work which brings intrinsic rewards. The Alberta Ombudsman's office works with quiet diplomacy whenever possible to effect positive change in the way the Alberta government departments and other jurisdictional entities provide services and make decisions affecting Albertans. However, when necessary, we will continue to utilize more public investigations to focus attention on issues which beg resolution.

I am approaching the end of my first five-year appointment as the Alberta Ombudsman. In retrospect, we have accomplished much in the past five years and the time has flown by quickly. However, there is still much to do and I am confident the Office is well positioned to meet the challenges tomorrow will inevitably bring.

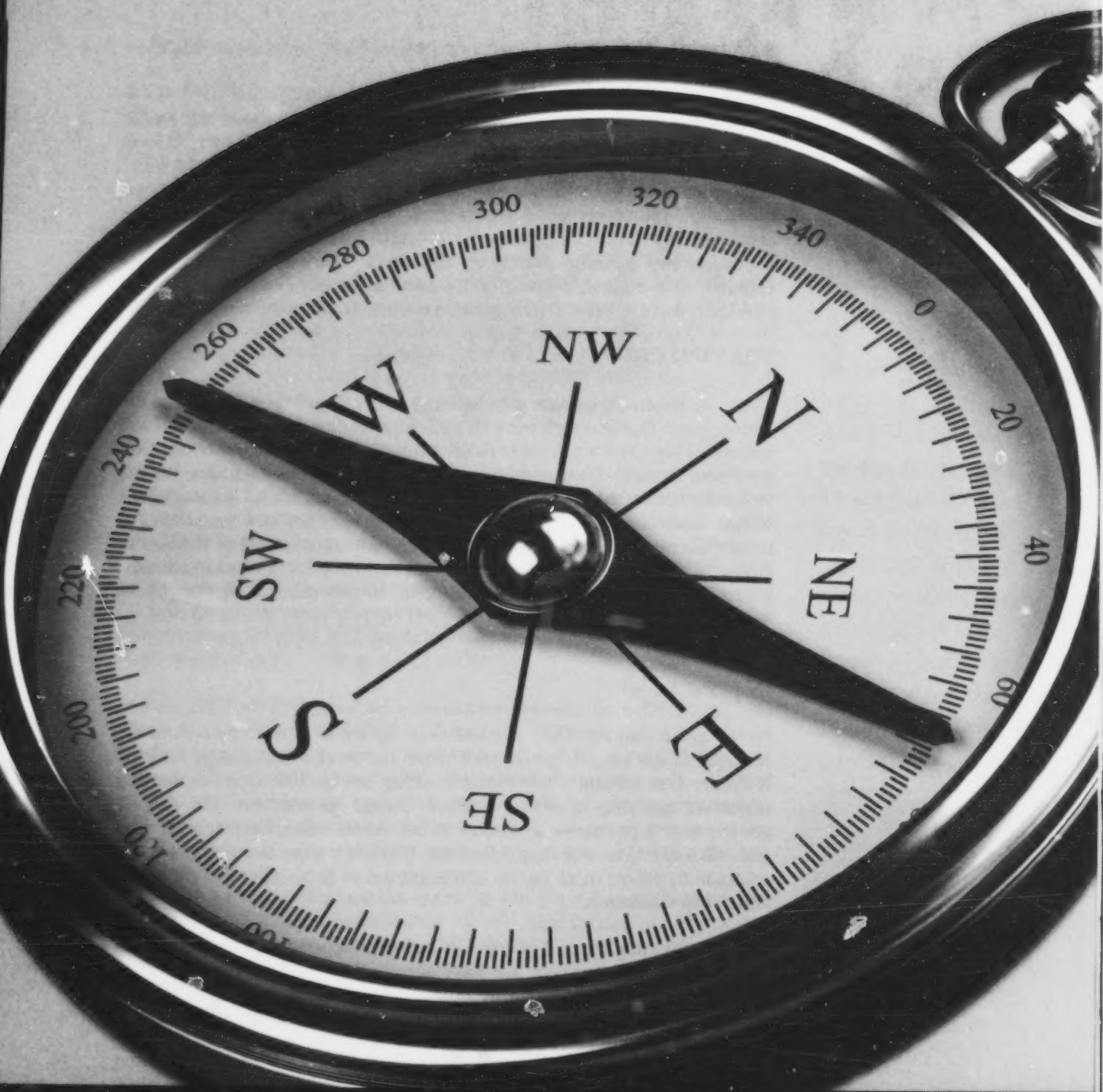


G. B. (Gord) Button  
Alberta Ombudsman

All the correctional centre directors across the province and their senior management staff, have been very responsive to our Alternative Complaint Resolution process which has resulted in timely solutions to a number of issues.

Erica Sharpe, Acting Director of Collections, Maintenance Enforcement Program, provides comprehensive and well thought out responses to both written and verbal inquiries.





BUSINESS PLAN UPDATE

## BUSINESS PLAN UPDATE

Our 2007/08-2009/10 Strategic Business Plan is a tool we use for guidance and future direction. The Plan is reviewed and updated annually.

We identified four core objectives to accomplish our goals. They are:

- manage the workload in an efficient and effective manner;
- excel in investigations;
- support workplace wellness and staff development; and
- enhance the knowledge and understanding of the role of the Ombudsman.

Following are highlights of initiatives undertaken this year to meet our objectives.

### **Objective #1: To Manage the Workload in an Efficient and Effective Manner.**

1. The Policy and Procedures Manual was updated to reflect current processes and includes corporate documents, policies, internal processes and office procedures.
2. Oral and email inquiries are responded to appropriately and promptly, as follows:

Target	2007/08 Actual	2006/07 Actual
90% of email inquiries responded to within 24 hours	100% response within 24 hours	98% response within 24 hours
90% of telephone inquiries responded to within 4 hours	96% within 2 hours 100% within 4 hours	91% within 2 hours 99% within 4 hours

3. The Alberta Ombudsman Case Tracking System was enhanced so that scanned documents can be attached to the investigation file. This allows all staff electronic access to paper documents which improves file management.

4. An equitable assignment of investigation files was maintained by the investigators, averaging 19 open files per investigator.
5. Staffing levels were reviewed to ensure our ability to effectively manage anticipated increased workload due to expanded jurisdiction and own motion investigations. A Team Leader/Senior Investigator was hired in Edmonton and in Calgary to provide staff mentoring and quality assurance support in addition to investigative functions.



## Objective #2: To Excel in Investigations.

1. Timely completion of investigations continues to be a focus. Improvements were made to investigative processes to improve efficiency, including:
  - streamlining Senior Management Team file reviews;
  - using short-form investigation reports, where applicable;
  - complaints analysts writing referral and non-jurisdictional letters, thereby freeing up the investigators' time; and
  - investigators exercising discretion to manage workloads.

Our achievements are as follows:

File Closure – All Written Files	2007/08	2006/07
Target	Actual	Actual
75% of files completed within 90 days	77%	74%
80% of files completed within 180 days	81%	77%
90% of files completed within 1 year	89%	85%
100% of files completed within 2 years	98%	99%

Complaints Resolved – Formal Investigations & Alternative Complaint Resolution	2007/08	2006/07
Target	Actual	Actual
32% of files completed within 90 days	23%	27%
50% of files completed within 180 days	37%	37%
75% of files completed within 1 year	63%	60%
100% of files completed within 2 years	95%	96%

2. There was a 10% increase in the number of active files as of March 31, 2008.
3. 100% of complainants are contacted within 14 days of receipt of their written complaint (target: 90%).
4. 95% of complainants are contacted within 10 days of assignment of the file to an investigator (target: 85%).
5. 81% of complainants are updated on the status of investigations within 90 days on second contact and 82% are contacted every 60 days thereafter (target: 90%).
6. As part of the orientation and skill development process, new investigators are mentored by an assigned Senior Investigator and/or a Team Leader/Senior Investigator.
7. One own motion investigation was initiated and completed into the actions of the Alberta Energy and Utilities Board.



## **Objective #3: To Support Workplace Wellness and Staff Development.**

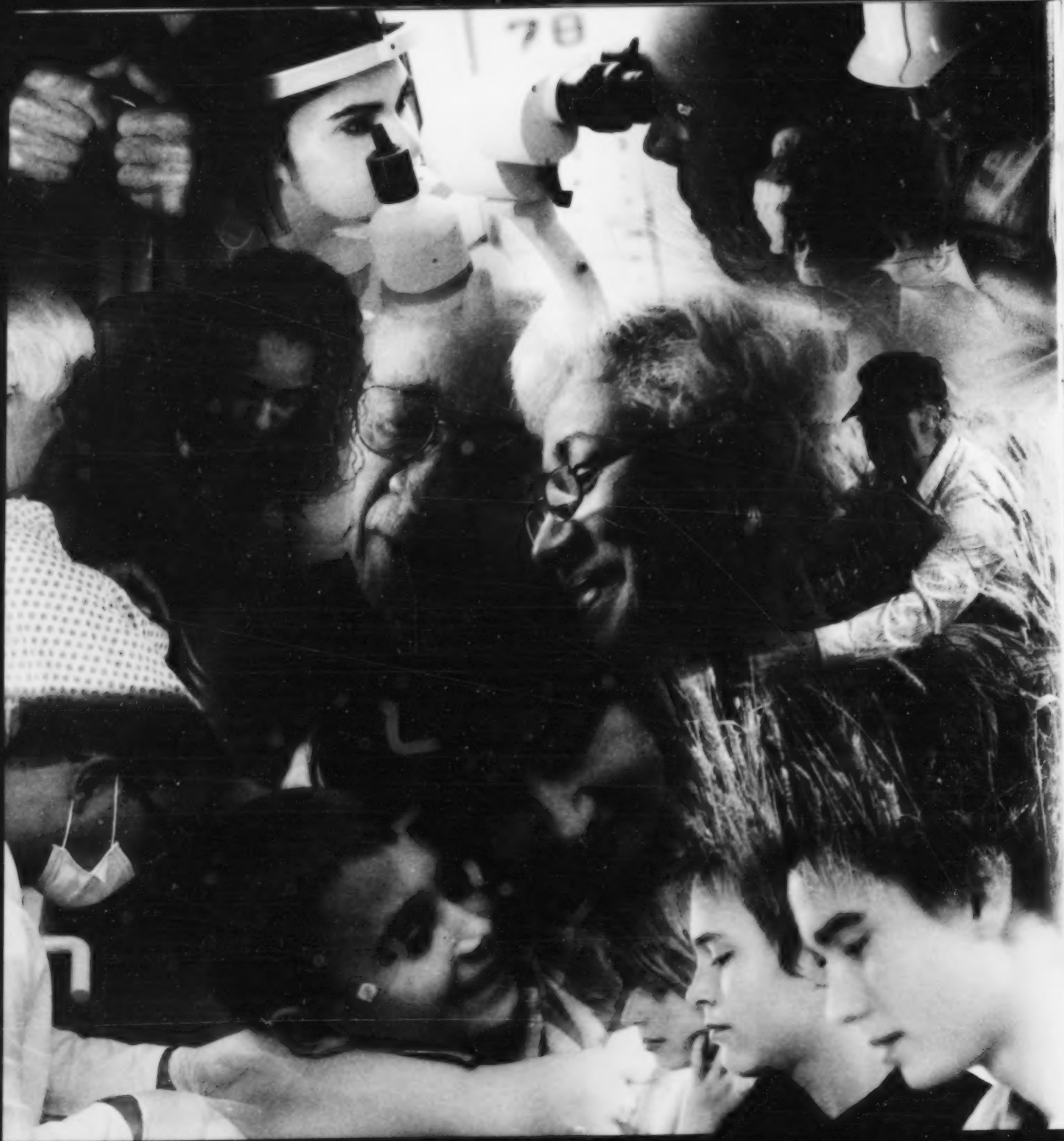
1. The Senior Counsel was promoted to Deputy Ombudsman and a new Senior Counsel was hired. Two Team Leader/Senior Investigator positions were filled internally. Three investigators were hired during the year.
2. All staff participated in annual performance reviews. Appropriate performance targets are in place linking performance evaluation with achievement awards. The file completion benchmark for investigators is set at 25 files per year.
3. Staff development opportunities were identified within individual learning plans, including:
  - University of Alberta Management Development Program;
  - office-wide retreat session on legal perspectives (internal and external);
  - Ontario Ombudsman Sharpening Your Teeth program for advanced investigative training;
  - United States Ombudsman Association Dealing with Unreasonable Complainants and New Ombudsman Staff Training sessions; and
  - Forum of Canadian Ombudsman Investigator training.
4. We assessed position classifications to ensure relevancy and competitiveness to enhance employee attraction and retention. We are awaiting the results of a classification appeal by Human Rights Officers to determine our next steps.
5. Ergonomic consultants evaluated and improved staff workspaces.



**Objective #4: To Enhance Knowledge and Understanding of the Role of the Ombudsman.**

1. The Ombudsman's target of one rural tour per year was not achieved as our outreach tour to the Peace River area was postponed due to the Alberta general election.
2. Our Office is promoting greater awareness of our services through:
  - authority consultations;
  - advertising in public transit;
  - stakeholder mail-outs of posters and brochures; and
  - 66 presentations to various groups, including:
    - o Health Authorities and health services groups on the role of the Ombudsman in the patient concerns resolution process;
    - o School-at-the-Legislature program to educate grade six students on the role of the Ombudsman; and
    - o correctional centre directors, auxiliary constable conference and other service groups and conferences.
3. We developed a 40<sup>th</sup> Anniversary logo which was included in letterhead, reports, posters, the website and advertising. We dedicated a section in the 40<sup>th</sup> Annual Report to the Office's history and achievements.





OUR ROLE

## OUR ROLE

The Alberta Ombudsman has the authority to investigate decisions, actions and recommendations made by a jurisdictional authority. Individuals who have concerns or complaints about the fairness of administrative actions by Alberta government departments, boards, agencies, commissions, designated professional organizations and the patient concerns resolution process of Health Authorities may bring these matters to the Ombudsman. Contact may be made by a phone call to the Office, through a letter or through the online complaint form located on our website.

If the initial contact is made by phone, the call will be directed to an intake officer who determines the caller's issues and whether the concern is with an agency jurisdictional to the Ombudsman. If the concern is not jurisdictional, the caller is referred to the appropriate source for information or assistance.

## APPEAL MECHANISMS

The caller may have a concern regarding the actions of a jurisdictional body but may not have used all available appeal processes. The *Ombudsman Act* requires complainants to take their concerns through these processes before seeking help from the Ombudsman. If all appeal processes have not been exhausted, the intake officer will provide information on options and processes available to the caller.

Callers who have a jurisdictional complaint and have completed the appeal processes may be able to resolve their complaint through Informal Resolution. For example, the caller could be an inmate who brought a concern to the attention of the correctional centre director but has not received a response. Rather than ask the inmate to make a formal written complaint to the Ombudsman, the intake officer may contact the director, provide information and inquire about the status of the inmate's concern. The intake officer may determine the director's response was sent but not yet received or the call may prompt a more timely response to the inmate. Whatever the outcome, such informal action by our Office is an attempt to resolve the issue in a timely fashion.

For all other oral complaints, the intake officer will explain the process of making a written complaint by online complaint form or by letter. The caller will be advised of the process that will occur once a written complaint is received by the Ombudsman.



## COMPLAINT ANALYSIS

The *Ombudsman Act* states all complaints to the Ombudsman shall be in writing. A complaints analyst reviews written complaints and considers whether:

- the complaint is about a department or agency under the authority of the *Ombudsman Act*;
- the complainant has exhausted all avenues of appeal;
- the complaint is a matter before the courts;
- the complainant has been directly affected by the action or decision being complained about;
- the complainant has third party representation; and
- the complainant has come forward in a timely manner.

The analyst will also identify the issues within the complaint. No action is taken on anonymous complaints.

If the Ombudsman accepts the complaint, there are two options for resolution: an Alternative Complaint Resolution may be attempted or the matter may proceed to a formal investigation. In both cases, the file is assigned to an investigator.

## ALTERNATIVE COMPLAINT RESOLUTION

Alternative Complaint Resolution (ACR) is a less formal process for handling complaints. It may be pursued for the following complaints:

- those which may have a reasonable chance of resolution within 21 days;
- those which involve fewer or less complex issues which are specific to the complainant; and
- where a less formal complaint resolution would be appropriate.

In order to proceed with ACR, the process must be agreed to by both the complainant and the department. Once the issues are clarified with the complainant, a department representative is contacted and possible avenues for resolution are discussed. Examples of potential resolutions include the provision of additional information exchanged between parties or negotiation of further actions by either party. The Ombudsman's investigator facilitates the complaint resolution but does not advocate for the interests of either party. If the matter is successfully resolved, the file is closed. If ACR is unsuccessful, the matter is reconsidered for formal investigation.

## FORMAL INVESTIGATION

A formal investigation begins with correspondence to the complainant and the Deputy Minister responsible for the department or the head of the agency. If the complaint involves actions of more than one department, files are opened with each department. The correspondence outlines the parameters of the issues for investigation and the letter to the department usually includes a copy of the complaint letter or the details from the online complaint form. The department is asked to provide a written response, which should include all relevant documentation, policy and legislation. The investigator reviews this response and file materials relevant to the complaint and interviews appropriate department staff members to determine if there is additional information related to the identified issues. The investigator also interviews the complainant to obtain any additional information or clarification of the issues. The investigator may interview anyone believed to have information relevant to the investigation and request copies of all pertinent documents that the complainant or others may have in their possession.



Once all information is gathered, the investigator analyzes the information based on the principles of administrative fairness and prepares an Investigation Report. This report identifies the issues investigated and provides background for the complaint. Information relevant to each issue is described and analyzed and conclusions are explained. Based on the analysis and conclusions, the investigator recommends a resolution for each issue to the Ombudsman.

## ADMINISTRATIVE UNFAIRNESS

If administrative unfairness is identified, the issue is supported. The issue is not supported if the action or decision did not demonstrate administrative unfairness and were consistent with legislation, policy and the principles of administrative fairness. For administratively unfair issues, the Ombudsman recommends a remedy which must be consistent with the nature of the unfairness. For example, if a decision was written in an administratively unfair manner, the Ombudsman may recommend the decision be rewritten or amended to rectify the deficiencies. If a hearing was conducted in an administratively unfair manner, the Ombudsman may recommend the decision be set aside and a new hearing held.

## INVESTIGATION CONCLUSION

At the conclusion of the investigation, the Ombudsman reports his findings on unsupported complaints to the complainant and the department or agency investigated. The decision identifies each issue investigated and the findings or conclusions.

On supported complaints, the Ombudsman shares his findings and recommendations with the Deputy Minister of the department or head of the agency and gives that person the opportunity to respond. There are occasions when the Deputy Minister or agency head agrees with the findings of administrative unfairness but will offer a different option for resolution. The recommendation for final resolution will be one which is acceptable to both the Ombudsman and the Deputy Minister or agency head. When the Ombudsman makes a recommendation, he relies on the power of persuasion as he does not have the authority to require an action. Once agreement is reached on a resolution, the conclusion is shared with the complainant. On the very rare occasion when no agreement is reached between the Ombudsman and the Deputy Minister or agency head, the Ombudsman has the power to report to the Minister, the Lieutenant Governor in Council and ultimately to the Legislature.

Most recommendations for resolution result in an action which directly impacts the complainant. Other recommendations correct a systemic issue which affects more than one person and improves the process or system within a department or agency.

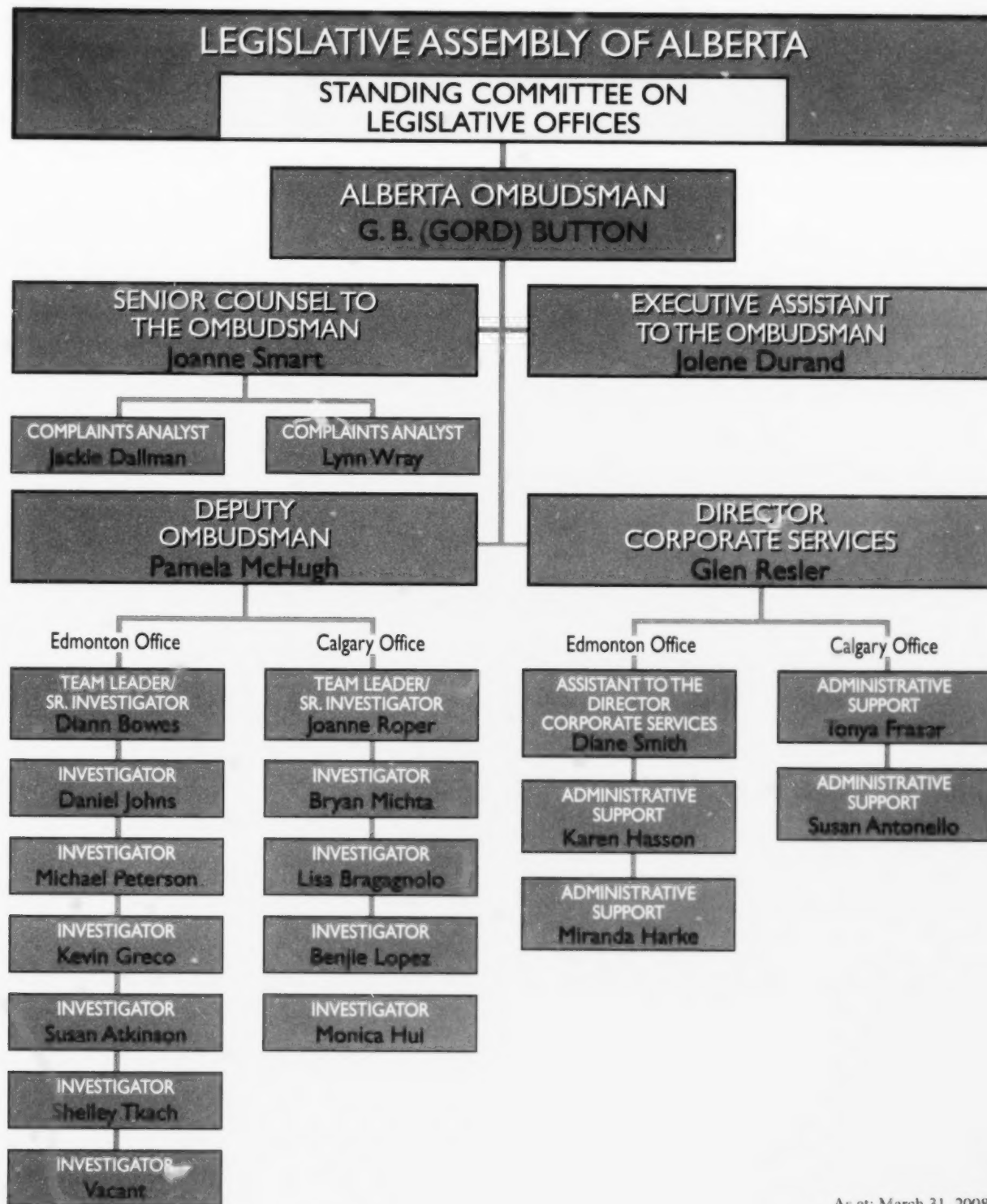
## OWN MOTION INVESTIGATIONS

The Ombudsman has an additional investigative power to conduct an own motion investigation, initiated at his own discretion. For example, an own motion investigation may result from a number of questions about the administrative fairness of a program that have come to the Ombudsman's attention through various investigations. When commencing an own motion investigation, the Ombudsman advises the Minister and the public and reports publicly on his findings upon conclusion.

## COMMITTEE-REFERRED OR MINISTERIALLY-ORDERED INVESTIGATIONS

The *Ombudsman Act* contains two other ways in which the Ombudsman may commence an investigation: a committee of the Legislative Assembly may refer a matter to the Ombudsman for investigation or a Minister of the Crown may order the Ombudsman to conduct an investigation.





As at: March 31, 2008



YEAR IN REVIEW

## YEAR IN REVIEW

April 1, 2007 through March 31, 2008

Of the 708 written complaints received, the most common authorities by volume of complaints are:

*Alberta Solicitor General and Public Security*  
13%

*Alberta Employment and Immigration*  
9%

*Workers' Compensation Board*  
7%

*Alberta Justice and Attorney General*  
6%

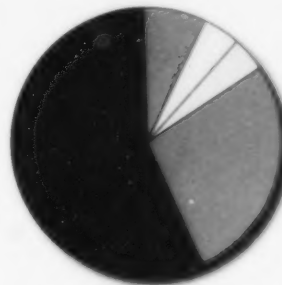
*Appeals Commission for Alberta Workers' Compensation*  
6%

*Alberta Children and Youth Services*  
5%

*Alberta Seniors and Community Supports*  
3%

4,395 Oral complaints received, up 5.2% from 2006/07

191 Informal Resolution \*  
1,203 Referred to other remedy or appeal  
2,487 Non-jurisdictional  
327 Written correspondence requested  
187 Other

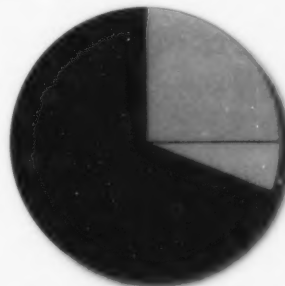


### ORAL COMPLAINTS

Informal Resolution  
Referred to other remedy or appeal  
Non-jurisdictional  
Written correspondence requested  
Other

708 Written complaints received, up 11.8% from 2006/07

197 New investigations  
25 New Alternative Complaint Resolution (ACR) files  
486 Declined for investigation (non-jurisdictional or referred to other remedy)

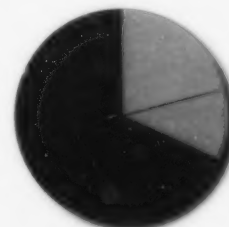


### WRITTEN COMPLAINTS

New investigations  
Alternative Complaint Resolution (see next chart)  
Declined for investigation

47 Total ACR issues

32 Successfully resolved through ACR  
10 Unsuccessful; transferred to formal investigation  
0 Discontinued  
5 Carried forward to 2008/09



### ACR FILES

Successful  
Unsuccessful  
Discontinued  
Carried forward



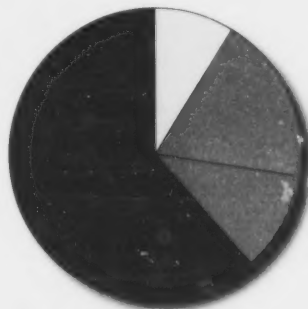
## YEAR IN REVIEW (continued)

253 Files carried forward from previous years

683 Files closed as of March 31, 2008

177 Formal investigations completed containing 349 issues

- 65 Supported
- 39 Partially supported
- 214 Unsupported
- 31 Discontinued

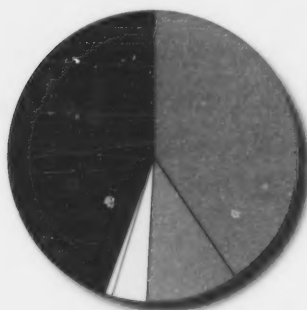


### FILES CLOSED - FORMAL INVESTIGATIONS

- Supported
- Partially supported
- Unsupported
- Discontinued

482 No investigation initiated

- 215 Referred to other remedy or appeal
- 196 No authority to investigate
- 49 Information requests
- 18 Declined on discretionary grounds
- 4 Otherwise resolved (without completing a full investigation)



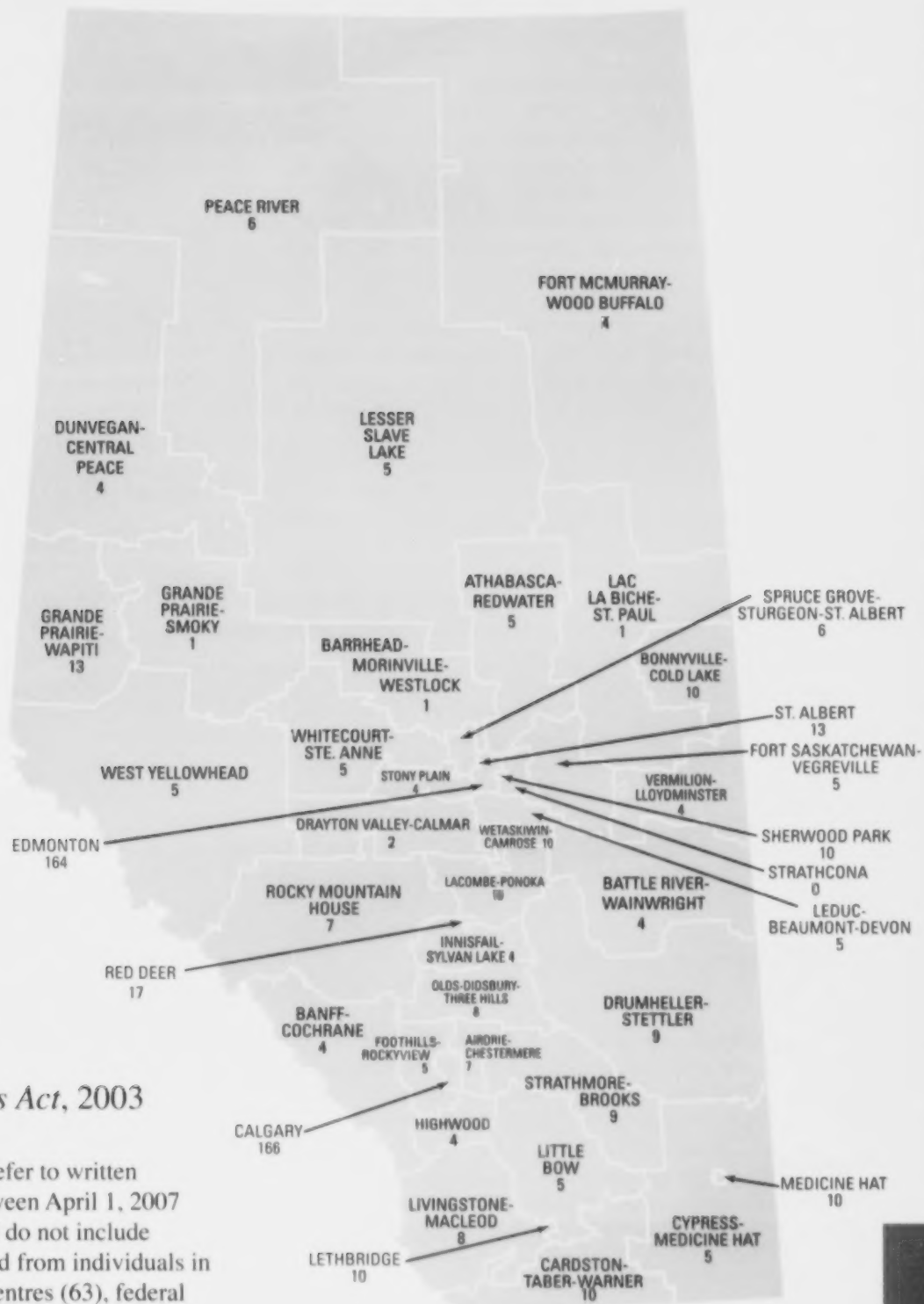
### FILES CLOSED - NO INVESTIGATION

- Referred
- No authority
- Information requests
- Declined
- Otherwise resolved

24 ACR files closed

278 Files carried forward to 2008/09

\*4% of oral complaints received were resolved in discussion with the authority without requiring a formal investigation



## PROVINCIAL ELECTORAL DIVISIONS

as defined by the  
*Electoral Divisions Act, 2003*

The figures on the map refer to written complaints received between April 1, 2007 and March 31, 2008, and do not include complaints that originated from individuals in provincial correctional centres (63), federal penitentiaries (3) and out of province (57).





ADMINISTRATIVE FAIRNESS

## ADMINISTRATIVE FAIRNESS GUIDELINES

Through the investigative process, we determine whether the actions or decisions being complained about are administratively unfair. We determine fairness by applying the following guidelines to each case.

1. **Chain of legislative authority.** What legislation created the authority or power to make a decision and to which decision-maker was the power granted?
2. **Duty of fairness.** The courts require that decision-making that affects the rights of individuals must follow a fair process. This duty of fairness means there must be procedural fairness in decision-making. We look for greater procedural protection if there is:
  - no right of appeal established within the statute;
  - no further appeal mechanism within the department, agency, board or professional body; and
  - a substantial effect on the individual's rights (i.e. loss of financial benefits).
3. **Participation rights.** Was the complainant given a full and fair opportunity to present their case to the decision-maker? Was there full disclosure of the case against the person, to the person?
4. **Adequate reasons.** There must be a rational connection between the evidence presented and the conclusions reached by the decision-maker. The decision-maker must identify and clearly communicate the decision and the reasons for the decision.
5. **Reasonable apprehension of bias.** We look for impartiality and independence of the decision-maker including relationships to all parties in the matter, both internally and externally.
6. **Legitimate expectation.** Did the decision-maker fail to honour a commitment or follow regular procedures?
7. **Exercising discretionary power.** We look to see how the discretion is established in the Act, Regulation, Policy, Guidelines, etc. Discretionary decisions are reviewed to determine if there is evidence of bad faith, improper purpose or irrelevant considerations.
8. **Was the decision reasonable?** A reasonable decision does not equate to whether the decision is wrong or whether it might have been decided in a different way. A reasonable decision should indicate how the decision-maker considered and assessed the arguments and evidence.

## ADMINISTRATIVE FAIRNESS CASE SUMMARIES

Following are explanations of how the administrative fairness principles are applied by the Alberta Ombudsman, and examples of cases where recommendations by the Alberta Ombudsman resulted in improved processes.

## 1. CHAIN OF LEGISLATIVE AUTHORITY

When commencing an investigation, we examine the relevant legislation since all powers of government departments, boards, agencies, commissions, designated professional organizations and the patient concerns resolution process of Health Authorities are derived from statute. We look at whether the legislation has delegated decision-making powers to either a legislated entity or an individual. A statute may grant the organization the ability to make regulations and grant decision-making power or it may grant the decision-maker the authority to exercise discretion based on parameters set out in regulation or in directives and policy.

If there are no specific powers in the legislation, we look at the *Government Organization Act*. This Act establishes the general authority of a department or agency to create programs, delegate powers, enter into agreements or establish boards or tribunals.

Once legislative authority is determined, we look at whether the decision-maker had the authority or understood he/she had the authority to make the decision and whether it was made in a process consistent with that required in legislation, regulation or policy. We also confirm the legislation, regulation or policy relied upon was valid at the time of the decision.



### *Case summary: Alberta Sustainable Resource Development*

A number of individuals were denied payments under the **Separation Payment for Restructuring (SPR)** program. The Master Agreement, Treasury Board Directives and other policies specified all SPR applications must be advanced to and decided on by the Deputy Minister. In these cases, the decisions were made at a lower level. It was also found the department created an "appeal process" which gave decision-making authority to other levels of management without the appropriate delegation. The Ombudsman recommended the department develop an administratively fair approval process to reflect the appropriate decision-making authority delegated to the Deputy Minister. The department agreed to revise its internal policies to ensure future applications are decided by the Deputy Minister, who would respond with adequate reasons.

*Case summary: Alberta Children and Youth Services*

An individual raised a number of concerns about unfair treatment by **Alberta Children and Youth Services** to her request for increased access to children who were in the care of the department. The department completed an Administrative Review of this matter. It was found the individual did not meet the criteria for eligibility for an Administrative Review as defined in the *Child, Youth and Family Enhancement Act*. The Ombudsman recommended the department take steps to ensure it acts within its legislated mandate. The department agreed and is in the process of developing a directive for Administrative Reviews to ensure they are conducted in an administratively fair manner.

## 2. DUTY OF FAIRNESS

The courts require decisions affecting the rights of individuals must follow a fair process. Decisions made by administrative bodies often have a more immediate and profound impact on people's lives than a court decision. Flowing from these decisions is a duty to act fairly and to make procedurally fair decisions. It is the legislative mandate of the Alberta Ombudsman to investigate complaints about the administrative fairness of decisions made by government departments, boards, agencies, commissions, designated professional organizations and the patient concerns resolution process of Health Authorities.

This obligation is flexible and variable, depending on the statute involved and the nature of the decision. The degree of fairness required is dependent on the effect of the decision on the rights of the individual and whether an avenue of appeal is established in legislation. If there is no established right of appeal, or if the individual has been to the final level of decision-making, the requirement for procedural protection, or fairness, is greater.

Procedures used by decision-makers vary depending on several factors, including:

- the nature of the decision;
- the level of legal sophistication and expertise of the decision-makers; and
- whether this is the last level of consideration.

For example, a government employee's decision in response to a citizen's request may be communicated differently from the decision of an administrative tribunal. The decision may be communicated verbally or in writing, depending on the circumstances. The **Maintenance Enforcement Program** frequently communicates with clients through email due to the high volume of interactions with clients. An email response in some situations is deemed sufficient and administratively fair. In other situations, email is inadequate and therefore unfair.

Greater procedural protection is required when there is a substantial effect on an individual's rights such as loss of financial benefits, license cancellation, disciplinary suspension or the right to continue in a profession or employment. Professional regulatory bodies under the *Health Professions Act* have stringent discipline procedures for their members set out in legislation and regulation. Administrative fairness requires strict adherence to the rules.

A decision of the **Appeals Commission for Alberta Workers' Compensation** is an example of a final avenue of appeal where the decision will have a significant impact on the individual worker. The Appeals Commission Rules of Procedure include rules such as notice and disclosure, recording of proceedings and requirements of written decisions. The Appeals Commission meets the duty of fairness by following the established rules.

## *Case summary: Health Authorities*

In the first investigated case involving the patient concerns resolution process of a **Health Authority**, the Ombudsman found there was no defined process followed in accordance with the provisions of the Patient Concerns Resolution Process Regulation, which is a legislated process. The health region had significant dealings with the complainant during its Patient Relations process, which is an advocacy process. The Ombudsman made ten recommendations to the Chief Executive Officer of the health region, all of which were accepted, including key recommendations for the health region to formalize the appointment of a Patient Concerns Officer, physically separate the offices of Patient Relations and the Patient Concerns Officer and develop written policy on the patient concerns resolution process.

## *Case summary: Protection for Persons in Care*

A person named as an alleged abuser in a **Protection for Persons in Care (PPIC)** investigation complained the PPIC investigator failed to interview individuals who were identified as being present during the reported incidents of abuse. The failure of the PPIC investigator to interview key witnesses was administratively unfair since it raised concerns the resulting decision was based on inadequate information. The Ombudsman recommended PPIC reinvestigate this matter. PPIC accepted this recommendation and appointed a different investigator to conduct the new investigation.





*Case summary: ATB Financial*

In two investigations into the handling of client concerns by the Manager of Service Excellence for **ATB Financial**, it was found ATB conducted reasonable reviews into the concerns raised but did not clearly communicate with the clients after the reviews. In both cases, the Ombudsman recommended ATB issue a letter clarifying how the Manager of Service Excellence responded to the complaint, the outcome of the investigation, how the conclusion was reached and in one file, how compensation was determined. In another file, the Ombudsman noted when responding to client complaints, administrative fairness requires ATB provide a written explanation demonstrating the concerns were addressed and the basis on which they were addressed, taking into account privacy concerns governing the release of certain information. The Ombudsman also recommended ATB make improvements to policies regarding the management of client concerns. All recommendations were accepted by ATB.

### 3. PARTICIPATION RIGHTS

There are two elements to participation rights. Firstly, a person is entitled to a full and fair opportunity to present his or her case to the decision-maker. A government department, board, agency, commission, designated professional organization or patient concerns resolution process demonstrates this by requesting information from the person and ensuring sufficient time for the person to respond. A tribunal invites all parties to provide written submissions or present orally at a hearing, ensuring there is adequate notice of the hearing. The tribunal provides a meaningful opportunity to be heard when all parties have sufficient time to state their position.

**Citizens' Appeal Panels** are a good example of how participation rights are protected in a tribunal process. Persons who disagree with decisions about certain financial benefits have the right to appeal those decisions to the Panel. Appellants are notified in writing of the hearing time, date and place. At the hearing, appellants can make a presentation, either orally or in writing, and can make a final statement prior to the hearing's conclusion.

Another example is the process followed by the **Alberta Human Rights and Citizenship Commission**. During the Commission's investigative process, information obtained during interviews is transcribed and submitted to the interviewee. The person can then correct any errors or omissions before decisions are made about the issue under investigation.

# ADMINISTRATIVE FAIRNESS CASE SUMMARIES

The second element to participation rights is a person's entitlement to full disclosure of the case. This includes access to any report or information that a decision-maker has relied upon in making a decision.

## *Case summary: College of Alberta Denturists*

An individual complained the **College of Alberta Denturists** unfairly dismissed a complaint about the actions of a practicing dentist. The Ombudsman noted the Complaints Director of the College did not allow the complainant to provide additional information and make additional arguments. The College contended the Complaints Director's actions constituted a review, not an investigation, which they felt did not carry the same requirement for administrative fairness as an investigation. The Ombudsman emphasized the College is required to be fair and recommended the College amend its policies to ensure adherence to the principles of administrative fairness. The Ombudsman also found the decisions of the Complaints Director and the Complaint Review Committee (CRC) failed to cite applicable legislation and the CRC failed to consider additional information provided by the complainant. The Ombudsman recommended the CRC review the additional information to ensure it made a decision based on all available information. The College accepted both recommendations.



## 4. ADEQUATE REASONS

Canadian courts have imposed a common law obligation on administrative decision-makers to provide adequate written reasons. It is not enough to outline the evidence and arguments made by the parties. There must be a rational connection drawn between the evidence and the conclusions, including a clear explanation of how the relevant legislation, regulation or policy was applied. Generally, it is only necessary to refer explicitly to evidence directly relevant to the issue. Decision-makers should not only explain what evidence was relied on to make the decision, but also what evidence was rejected and why it was rejected. A well-written decision must address the major arguments raised by all parties. Decision-makers are not required to address every point or piece of evidence. They do need to address the major evidence they relied on or rejected in coming to their decision.

The decision and reasons must be clearly communicated in language easily understood by a reasonably informed person. The decision should answer the question, "Why did the decision-maker make that decision?"

*Case summary: Alberta Employment and Immigration*

An individual complained the **Citizens' Appeal Panel** unfairly upheld the decision of the Assured Income for the Severely Handicapped program to deny eligibility for benefits. The Ombudsman identified two problems: in its reasons for the decision, the Panel failed to outline the criteria upon which the evidence was evaluated and failed to show how it linked the findings of fact and the medical evidence. The second area of administrative unfairness was the gratuitous comments made by the Panel in its written decision. The Ombudsman recommended the Panel write an addendum to the decision and that recommendation was accepted.

**5. REASONABLE APPREHENSION OF BIAS**

Decisions must be made by impartial and independent decision-makers. "Impartial" applies to the state of mind or attitude of the decision-maker so that there is no bias, either real or perceived. Impartial decisions are made based on objective criteria. To be "independent", the decision-maker must be free from interference by the executive and legislative branches of government and from other external forces such as business, corporate interests or other pressure groups.

A widely quoted excerpt from a 1978 decision of the Supreme Court of Canada established the test for reasonable apprehension of bias as follows:

*"What would an informed person, viewing the matter realistically and practically...conclude? Would he think that it is more likely than not that (the decision-maker), whether consciously or unconsciously, would not decide fairly?"*

To be impartial and independent, decision-makers should declare real or perceived conflicts of interest. The appearance of impartiality is necessary to maintain confidence in the decision-making process. In cases where it appears decision-makers would not be objective even when they feel they could make an unbiased and fair decision, they have an obligation to disclose the potential conflict or excuse themselves from the case.

Decision-makers should guard against forming opinions about the person or the case before reviewing the documentation and hearing from all parties. An appearance of bias might result from the behavior of a decision-maker at a hearing, such as repeatedly silencing a party or behaving in an overly aggressive or sarcastic manner. If the decision-maker was involved in the case prior to the hearing, it may appear to a reasonable person the decision-maker has prejudged the matter.



## *Case summary: Workers' Compensation Board*

A worker's request for a different case manager was denied more than once by the **Workers' Compensation Board (WCB)** on the grounds the case manager was properly managing the claim. The worker accused the case manager of fraud, lying, malpractice, blackmail and making threats. The worker was charged by police for uttering threats against the case manager and subsequently plead guilty. During and after the court case, the worker made several requests for a different case manager, all of which were denied.

The Ombudsman found the filing of criminal charges against the worker and security and safety issues for the case manager warranted the appointment of a new case manager. As a result of the Ombudsman's recommendations, the WCB developed a new procedure outlining the grounds for changing a case manager, including the protection of the employer/worker, protection of the WCB and its staff and maintaining impartiality in decision-making.



## *Case summary: Alberta Justice and Attorney General*

An individual complained the **Fatality Review Board** refused to conduct a public fatality inquiry into the death of a relative and failed to address allegations the actions of the Medical Examiner were unfair. The Ombudsman found the Board had a reasonable basis to reject the inquiry request but the Board failed to recognize its legislative authority to review complaints about the Medical Examiner.

The Ombudsman's investigation found the Board's original decision letter was signed by an administrative employee of the Medical Examiner's office rather than by the Board Chair. The letter also failed to demonstrate the decision was made in an administratively fair manner. The Ombudsman observed to the Board it needs to demonstrate its independence and made several recommendations about how letters should be written, including using Board letterhead, ensuring letters are signed by the Chair, providing the legislative basis for the authority of the Board and providing reasons for the decision. The Ombudsman also recommended the following:

- the decision document contain a record of attendance at the Board meetings and a record of the information considered;
- revise the Alberta Justice website to fully reflect the authority of the Board to make recommendations to the Minister when reviewing complaints about the Medical Examiner's office; and
- the Board consult with the Minister on the need to produce an annual report.

All the recommendations were accepted and implemented. The Ombudsman also recommended the Board review the complaint about the Medical Examiner in accordance with legislation. That recommendation was accepted.

## 6. LEGITIMATE EXPECTATION

Legitimate expectation is based on the principle that promises or regular practices of the administrative decision-maker should be taken into account. A person has a legitimate expectation that when an application form is submitted, the government department, board, agency, commission, designated professional organization or patient concerns resolution process will actually process the application. When a person challenges a decision, it is important and administratively fair for the decision-maker to honour promises made about following procedure, unless the decision-maker can provide a high level of procedural rights in a different form. Failing to meet legitimate expectations in decision-making may be as simple as an official failing to follow through after agreeing to take an action or write a decision letter; it becomes more complex if the authority fails to follow what may be considered a regular procedure, therefore treating an individual in an unfair manner.

When an inmate in a **correctional centre** is charged with an institutional violation, he or she receives a Notice to Offender/Inmate of Disciplinary Hearing Procedure stating procedural expectations for the disciplinary hearing, such as:

*"The hearing adjudicator will ask you questions relating to the information they have received and you shall direct your replies to the hearing adjudicator. If you have questions you wish to ask any witnesses that are called at the hearing, you may direct them to the hearing adjudicator who will then ask the witness the question. The hearing adjudicator will allow you to present relevant evidence on your own behalf and it may be checked by the hearing adjudicator to verify its accuracy."*

These are procedural expectations for both parties and Ombudsman investigations examine whether those legitimate expectations were met.

*Case summary: Alberta Transportation*

An individual complained the **Driver Programs and Licensing Standards Branch** failed to properly address complaints about a private driver examiner. The Ombudsman's investigation found the Branch could not demonstrate it fulfilled its responsibilities to investigate the complaint. Other than email exchanges with the complainant, no records existed to indicate action was taken on the complaint. The department has policies regarding how investigations should be conducted but the Branch investigators were unaware of the policies. The Ombudsman made seven recommendations including changing the policies, ensuring they were compatible with legislation, keeping better records and improving training. The department accepted the Ombudsman's recommendations and is rewriting its policy manuals.

*Case summary: Alberta Solicitor General and Public Security*

An investigation was conducted into a complaint from an inmate who alleged an unfair transfer from one **correctional centre** to another despite a written decision from the director of the sending centre that the inmate could remain to accommodate a family visit. The Ombudsman found there was a breakdown in communication at the centre and recommended a letter to the inmate acknowledging the unfairness. The Ombudsman also recommended the director initiate steps to avoid similar incidents in future. The recommendations were accepted and implemented.

## 7. DISCRETIONARY POWERS

Although considerable deference is given to decision-makers to allow them to make their own decisions and determine the scope of their jurisdiction, discretion must still be exercised within a reasonable interpretation of legislation. We examine how discretion is established in the statute, regulation or policy guidelines. Discretionary decisions are reviewed or questioned on limited grounds such as evidence of bad faith, the exercise of discretion for an improper purpose or the use of irrelevant considerations. There may be more than one way to decide a matter, but whatever decision is made, it must be done properly.

It is important to ensure the discretion is not incongruent with the power established in legislation and the person making the decision has the proper authority to exercise discretion. When exercising discretionary decision-making powers, the decision-maker must proceed only under the appropriate legislation, must make a decision and must carry out only what the legislation authorizes.

In many statutes governing department actions, senior executives or an appeal panel may exercise discretionary power. The Ombudsman will comment when errors occur or when an inappropriate interpretation or use of the delegated discretionary power is found.

*Case summary: Alberta Employment and Immigration*

The Ombudsman investigated the administrative fairness of a decision by the **Citizens' Appeal Panel** to confirm the denial of an applicant's request for Special Needs Assistance for Seniors benefits. The Ombudsman found the Panel failed to explain how it weighed the evidence and failed to adequately explain how the legislation applied to the situation. The Panel also referenced an irrelevant consideration in its decision and attempted to provide a solution to the applicant rather than determine whether, given the legislation and circumstances presented, the senior was eligible for a monetary benefit. The Ombudsman recommended the appeal be reheard. The department agreed and a new hearing was held with a new Panel.

*Case summary: Protection for Persons in Care*

The son of a resident in an extended care facility complained about the results of an investigation conducted by the **Protection for Persons in Care** (PPIC) program. The son complained he did not receive information about the PPIC investigation though he did receive a final written decision report. It was the policy of PPIC to notify the complainant/reporter, the agency/facility and the alleged abuser but not the alleged victim and/or the legal guardian. PPIC policy allowed the agency/facility the discretion to notify the alleged victim and/or the legal guardian.

The Ombudsman found it was administratively unfair to delegate notification responsibility to the agency/facility because the agency/facility may find itself in a conflict of interest situation if the allegations of abuse occurred while the agency/facility was responsible for the care of the alleged victim. The Ombudsman recommended PPIC revise its practice to include the alleged victim and/or the legal guardian in the initial notification process. PPIC accepted and implemented that recommendation and the recommendation to issue a revised decision document to the son.

*Case summary: ATB Financial*

An individual complained about the adequacy of the response from the Manager of Service Excellence for **ATB Financial** to a complaint about the purchase of an investment product. The Ombudsman found there was no explanation provided of the actions taken by the Manager when the complaint was filed, no explanation of the investigation results and no explanation of how the offer of compensation was calculated. The Ombudsman recommended ATB send a letter of explanation to the complainant and a revised policy governing the handling of complaints



to stress the importance of providing full information. The Ombudsman also recommended the development of policy governing the exercise of discretion in such areas as the calculation of compensation packages. All the Ombudsman's recommendations were accepted.

## 8. WAS THE DECISION REASONABLE?

A reasonable decision should indicate how the decision-maker considered and assessed arguments. In assessing the reasonableness of a decision, it is important to relate how the evidence was weighed and give reasons about how the decision-maker considered and assessed the arguments and evidence. A reasonable decision is made within the statutory mandate and is grounded in the evidence presented.

The Ombudsman is not a substitute decision-maker; rather, he looks at the reasonableness of decisions based on available evidence. When the Ombudsman concludes a decision was reasonable, he is not making a determination whether the decision was right or wrong or whether it may have been decided differently. If the decision is not reasonably based on arguments and evidence presented and accepted by the decision-maker, the Ombudsman may find the decision unreasonable. In the majority of cases, the decision itself is rarely found to be unreasonable although there may be administratively unfair components of the decision.

### *Case summary: Alberta Gaming and Liquor Commission*

An applicant was denied a license to install video lottery terminals in the applicant's business on the basis that public opinion in the area surrounding the facility was opposed to such gaming. The Ombudsman's investigation found the municipality circulated a petition asking citizens if they wanted a plebiscite on the issue of video lottery terminals but the petition did not ask if citizens supported video lottery terminals in their community. As a result, public opinion was an unknown factor. The Ombudsman's investigation also found the Commission did not honour the applicant's right to know the basis on which the decision was made and the right to know the case against him.

The Ombudsman recommended the Commission enact policy to specify how public opinion is taken into consideration and to advise potential applicants how public opinion might be considered. The Ombudsman also recommended reconsideration of the applicant's application. The Ombudsman's recommendations were accepted and are being implemented.



## ALTERNATIVE COMPLAINT RESOLUTION

The Alberta Ombudsman established an **Alternative Complaint Resolution (ACR)** process in 2005, allowing for the quick resolution of matters which would otherwise be assigned for formal investigation. The following examples illustrate the type of cases dealt with through ACR.

### *Case summary: Alberta Solicitor General and Public Security*

Of the 47 issues which were dealt with through ACR, 24 issues involved complaints from inmates in **correctional centres**. The majority of issues involved either personal property problems or inadequate responses from staff to inmate questions. The following two cases are typical examples of common issues well suited to the ACR process:

- An inmate complained personal property was lost during the transfer of the inmate between two correctional centres. After discussions with the inmate and the director of the sending centre, the lost property was replaced.
- An inmate complained concerns raised with the director about the behaviour of two correctional staff were not addressed. The inmate provided a request form indicating the director undertook to review the matter, but the inmate had no further response. Although the inmate was transferred to another centre, after discussions with the inmate and the director, an agreement was reached for the director to provide a further response to the inmate.

### *Case summary: Alberta Children and Youth Services*

An individual who was in a contractual relationship with **Alberta Children and Youth Services** complained about a lack of response to a request for clarification on the scope of the contract. After discussion with both parties, a dialogue commenced about the contract relationship. A commitment was made by both parties to further discussion and the provision of a letter to formally clarify the department's response.

## IN CONCLUSION

The Alberta Ombudsman continues to work with departments, boards, agencies, commissions, designated professional organizations and the patient concerns resolution processes of Health Authorities to improve the administrative fairness of their processes. Their cooperation and willingness to rectify administrative unfairness found in Ombudsman investigations illustrates their commitment to the administratively fair delivery of services, programs and decision-making processes to Albertans.



OWN MOTION INVESTIGATION



## ALBERTA ENERGY AND UTILITIES BOARD

The Ombudsman commenced an investigation into the administrative actions of the Alberta Energy and Utilities Board (AEUB) after it hired and deployed private investigators to monitor and report on the activities of interested parties attending the Rimbey hearings on the proposed 500 kilovolt (kV) power transmission line between Edmonton and Calgary. As an independent officer of the Legislative Assembly of Alberta who reports directly to the Legislative Assembly, the Ombudsman was in the best position to conduct an independent investigation. With broad statutory authority to access information, the Ombudsman operates independently from any part of the Alberta government and elected officials. The authority for the Ombudsman to investigate on his own motion is provided by Section 12(2) of the *Ombudsman Act*.

## BACKGROUND

The Rimbey hearings were part of several public hearings held by the AEUB to consider applications to construct and operate a 500 kV Edmonton-Calgary electric transmission line. During the hearing process, the AEUB hired private investigators to provide security for the hearings.

The Ombudsman had received several complaints about the AEUB's handling of the application and review process so he had been monitoring the AEUB's ongoing approval process.

## OWN MOTION OBJECTIVES

The Ombudsman's investigation focused on:

- the AEUB's decision to hire private investigators and the mandate given;
- the AEUB's oversight and use of information collected by the private investigators; and
- the impact of these actions on the administrative fairness of the hearing process.

## CONCLUSION

The own motion investigation was discontinued, based on Section 13 of the *Ombudsman Act*, after interested parties filed an Originating Notice with the Court of Queen's Bench of Alberta. After considering the Originating Notice, the Ombudsman felt the issues before the court were the same matters included in the Ombudsman's investigation.

Subsequently, a Court of Appeal of Alberta decision voided the relevant AEUB decisions. The AEUB was split into the Alberta Utilities Commission (AUC) and the Energy Resources Conservation Board (ERCB) which meant the AEUB proceedings in question were cancelled. Any new proceedings will begin under the newly-restructured AUC and ERCB.



# JURISDICTIONAL CHALLENGE

## ALBERTA OMBUDSMAN v ALBERTA HUMAN RIGHTS AND CITIZENSHIP COMMISSION

The Ombudsman investigated an allegation that the Alberta Human Rights and Citizenship Commission (AHRCC) unfairly handled a discrimination complaint. Several issues were raised including an allegation the Acting Chief Commissioner failed to address alleged misrepresentations of fact, the presentation of new information and the lack of a personal remedy to the complainant. While the Ombudsman found the AHRCC acted fairly in the majority of issues, he found the Acting Chief Commissioner's decision did not address the issue of remedy argued by the complainant. As a result, the Ombudsman recommended the AHRCC issue an addendum addressing the issue of remedy.

The AHRCC refused to implement the Ombudsman's recommendation, arguing it did not have the authority to implement such a recommendation. After discussions and unsuccessful attempts to resolve this matter with the AHRCC, the Ombudsman applied to the Court of Queen's Bench of Alberta for a declaration of his jurisdiction to review and make recommendations regarding decisions made by the AHRCC Chief Commissioner. A Court of Queen's Bench of Alberta decision dated March 13, 2008 and order dated May 7, 2008 confirmed the Ombudsman's authority to investigate decisions made by the Chief Commissioner and the Chief Commissioner's ability to implement the Ombudsman's recommendations.

The court decision addressed issues of the impact on the Ombudsman of finality clauses in other legislation; the supremacy clause in the *Ombudsman Act* and whether the Ombudsman's recommendations can be implemented in situations involving bilateral adjudicative decisions. Further details are found in the complete court decision located on the Alberta Ombudsman's website at [www.ombudsman.ab.ca](http://www.ombudsman.ab.ca).

Subsequent to the court decision, the Ombudsman wrote the AHRCC Acting Chief Commissioner to ask whether she will implement his recommendation. At the time of printing, the Ombudsman is awaiting a response.



# FINANCIAL STATEMENTS

## FINANCIAL STATEMENTS

As at March 31, 2008

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## Auditor's Report

To the Members of the Legislative Assembly

I have audited the statement of financial position of the Office of the Ombudsman as at March 31, 2008 and the statements of operations and cash flows for the year then ended. These financial statements are the responsibility of the Office's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office as at March 31, 2008 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Edmonton, Alberta  
June 20, 2008

 FCA  
Auditor General



# STATEMENT OF FINANCIAL POSITION

## AS AT MARCH 31, 2008

	2008	2007
<b>Assets:</b>		
Cash	\$ 400	\$ 400
Advances	5,800	5,800
Tangible capital assets ( <i>note 3</i> )	44,325	26,726
	<b>\$ 50,525</b>	<b>\$ 32,926</b>
<b>Liabilities:</b>		
Accounts payable and accrued liabilities	\$ 110,342	\$ 115,769
Accrued vacation pay	217,524	187,991
	<b>327,866</b>	<b>303,760</b>
<b>Net Assets:</b>		
Net liabilities at beginning of year	(270,834)	(269,578)
Net operating results	(2,510,813)	(2,255,748)
Net transfer from general revenues	2,504,306	2,254,492
Net liabilities at end of year	(277,341)	(270,834)
	<b>\$ 50,525</b>	<b>\$ 32,926</b>

The accompanying notes and schedules are part of these financial statements.



# STATEMENT OF OPERATIONS

## FOR THE YEAR ENDED MARCH 31, 2008

	2008	2007
	Budget	Actual
Revenues:		
Other revenue:	\$ -	\$ 5,606
		5,606
Expenses (note 5):		
Voted:		
Salaries, wages and employee benefits	\$ 2,064,084	\$ 1,765,731
Supplies and services (note 2)	417,196	465,072
	\$ 2,546,000	2,481,280
Non Budgetary		
Valuation adjustment		
Provision for vacation pay	29,533	30,551
	29,533	30,551
Net operating results	\$ (2,510,813)	\$ ( 2,255,748)

The accompanying notes and schedules are part of these financial statements.

# STATEMENT OF CASH FLOWS

## FOR THE YEAR ENDED MARCH 31, 2008

	2008	2007
Operating transactions		
Net operating results	\$ (2,510,813)	\$ (2,255,748)
Non-cash items included in net operating results		
Amortization	17,320	5,681
	(2,493,493)	(2,250,067)
Decrease in accounts receivable	-	2,000
Decrease in accounts payable		
and accrued liabilities	(5,427)	(36,976)
Increase in accrued vacation pay	29,533	30,551
Cash applied to operating transactions	(2,469,387)	(2,254,492)
Capital transactions		
Acquisition of tangible capital assets	(34,919)	-
Cash applied to capital transactions	(34,919)	-
Investing transactions		
Advances	-	-
Cash applied to investing transactions	-	-
Financing transactions		
Net transfer from general revenues	2,504,306	2,254,492
Increase in cash	-	-
Cash, beginning of year	400	400
Cash, end of year	\$ 400	\$ 400

The accompanying notes and schedules are part of these financial statements.

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 2008

### Note 1 - Authority and Purpose

The Alberta Ombudsman is an officer of the Legislature who operates under the authority of the *Ombudsman Act*. The net cost of the operations of the Office of the Ombudsman (the Office) is borne by the General Revenue Fund of the Province of Alberta. Annual operating budgets are approved by the Standing Committee on Legislative Offices.

The Office promotes fairness in public administration within the Government of Alberta, designated professional organizations and the patient concerns resolution process of Health Authorities and the Alberta Cancer Board.

### Note 2 - Summary of Significant Accounting Policies and Reporting Practices

These financial statements are prepared in accordance with Canadian generally accepted accounting principles for the public sector as recommended by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants.

#### a) Reporting Entity

The reporting entity is the Office of the Ombudsman which is a legislative office, for which the Alberta Ombudsman is responsible.

The Office operates within the General Revenue Fund. The Fund is administered by the Minister of Finance. All cash receipts of the Office are deposited into the Fund and all cash disbursements made by the Office are paid from the Fund. Net transfer from General Revenues is the difference between all cash receipts and all cash disbursements made.

#### b) Basis of Financial Reporting

##### *Revenues*

All revenues are reported on the accrual basis of accounting. Cash received for which goods or services have not been provided by year end is recorded as unearned revenue.



### *Expenses*

Expenses represent the costs of resources consumed during the year on the Office's operations.

Pension costs included in these statements comprise the cost of employer contributions for current service of employees during the year.

Certain expenses, primarily for office space, incurred on behalf of the Office by government departments are not reflected in the Statement of Operations but are disclosed in Schedule 2.

### *Valuation Adjustments*

Valuation adjustments represent the change in management's estimate of future payments arising from obligations relating to vacation pay.

### *Assets*

Tangible capital assets are recorded at historical cost and amortized on a straight-line basis over the estimated useful lives of the assets as follows:

Computer hardware and software	3 years
Furniture and other office equipment	10 years

Assets are capitalized if their useful life is expected to be longer than one year and purchase price is \$5,000 or greater.

### *Amortization of Capital Assets*

A full year of amortization is taken in the year of acquisition.

In 2008 and subsequent years, amortization expense is included as a voted operating expense. This change in format is to be consistent with the Government of Alberta in reporting of Estimates and Financial Statements. Amortization figures for 2007 have been reclassified to reflect this policy.

### *Net Liabilities*

Net liabilities represent the difference between the carrying value of the assets of the Office and its liabilities.

## *Valuation of Financial Assets and Liabilities*

Fair value is the amount of consideration agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act.

The fair values of cash, advances, and accounts payable and accrued liabilities are estimated to approximate their carrying values because of the short term nature of these instruments.

## *Note 3 - Tangible Capital Assets*

		2008		2007
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Computer hardware and software	\$ 41,945	\$ 18,665	\$ 23,280	\$ 2,342
Furniture and other office equipment	33,387	12,342	21,045	24,384
	\$ 75,332	\$ 31,007	\$ 44,325	\$ 26,726

## *Note 4 - Lease Obligations or Commitments*

The Office leases certain equipment under operating leases that expire on various dates to 2011. The aggregate amounts payable for the unexpired terms of these contractual obligations are as follows:

2009	\$ 6,285
2010	5,634
2011	1,817
Total	\$ 13,736



## Note 5 - Budget

The following table compares the Office's actual expenses to the voted budgets. Budgeted expenses for 2007-08 were approved by the Select Standing Committee on Legislative Offices on December 13, 2006. Reallocation of funds between operating and capital budgets requires Ombudsman approval.

### Operating Expenses

Voted budget	\$ 2,546,000
Actual expenses (excluding valuation adjustments)	2,481,280
Unexpended	<u>\$ 64,720</u>

### Capital Investments

Voted budget	\$ -
Actual expenses	34,919
Overexpended	<u>\$ (34,919)</u>

2007-08 Net Unexpended	<u>\$ 29,801</u>
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## Note 6 - Defined Benefit Plan (in thousands)

The Office participates in the multi-employer Management Employees Pension Plan and Public Service Pension Plan. The Office also participates in the multi-employer Supplementary Retirement Plan for Public Service Managers. The expense for these pension plans is equivalent to the annual contributions of \$159 for the year ended March 31, 2008 (2007 – \$145).

At December 31, 2007, the Management Employees Pension Plan reported a deficiency of \$84,341 (2006 deficiency \$6,765) and the Public Service Pension Plan reported a deficiency of \$92,070 (2006 surplus \$153,024). At December 31, 2007 the Supplementary Retirement Plan for Public Service Managers had a surplus of \$1,510 (2006 surplus \$3,698).

The Office also participates in two multi-employer Long Term Disability Income Continuance Plans. At March 31, 2007, the Bargaining Unit Plan reported an actuarial deficiency of \$6,319 (2007 surplus \$153) and the Management, Opted Out and Excluded Plan an actuarial surplus of \$7,874 (2007 surplus \$10,148). The expense for these two plans is limited to employer's annual contributions for the year.

## Note 7 - Approval of Financial Statements

These financial statements were approved by the Senior Financial Officer and the Ombudsman.

# SCHEDULE 1: SALARY AND BENEFITS DISCLOSURE FOR THE YEAR ENDED MARCH 31, 2008

	2008			2007	
	Base Salary <sup>(1)</sup>	Other Cash Benefits <sup>(2)</sup>	Other Non-Cash Benefits <sup>(3)</sup>	Total	Total
Senior official					
Ombudsman <sup>(4)</sup>	\$ 179,880	\$ 4,291	\$ 42,982	\$ 227,153	\$ 196,948
Deputy Ombudsman <sup>(5)</sup>	\$ 141,364	\$ 10,006	\$ 38,024	\$ 189,394	\$ 158,635

(1) *Base salary includes regular base pay.*

(2) *Other cash benefits include bonuses, vacation payouts, overtime and lump sum payments.*

(3) *Other non-cash benefits include government's share of all employee benefits and contributions or payments made on behalf of employees including pension, health care, dental coverage, group life insurance, short and long-term disability plans, professional memberships and tuition fees.*

(4) *Automobile provided, no dollar amount included in other non-cash benefits.*

(5) *Due to the retirement of the Deputy Ombudsman, the salary and benefits being reported are based on two staff and 13 1/2 months of employment as a result of the transition period.*



## SCHEDULE 2: SCHEDULE OF ALLOCATED COSTS FOR THE YEAR ENDED MARCH 31, 2008

Program	2008			2007	
	Expenses <sup>(1)</sup>	Expenses Incurred by Others	Valuation Adjustments <sup>(3)</sup>	Total Expenses	Total Expenses
		Accommodation Costs <sup>(2)</sup>	Vacation Pay		
Operations	\$ 2,481,280	\$ 261,217	\$ 29,533	\$ 2,772,030	\$ 2,465,760

(1) *Expenses - Directly incurred as per Statement of Operations, excluding valuation adjustments.*

(2) *Costs shown for Accommodation (includes grants in lieu of taxes), allocated by square footage.*

(3) *Valuation Adjustments as per Statement of Operations.*

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# CONTACT INFORMATION



